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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,081	10/10/2001	William D. Swart	007412.00259	5256

71867 7590 10/27/2009
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EXAMINER

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ART UNIT	PAPER NUMBER
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2421

MAIL DATE	DELIVERY MODE
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10/27/2009

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/973,081
Filing Date: October 10, 2001
Appellant(s): SWART ET AL.

Swart et al
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 17, 2009 appealing from the Office action mailed November 17, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,600,573	HENDRICKS ET AL	2-1997
5,956,716	KENNER ET AL	9-1999
5,864,546	CAMPANELLA	1-1999
5,608,447	FARRY ET AL	3-1997
5,485,197	HOARTY	1-1996
5,446,919	WILKINS	8-1995

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (5,600,573, of record) [Hendricks] in view of Kenner et al. (5,956,716, of record) [Kenner], Campanella (5,864,546, of record), Farry et al. (5,608,447, of record) [Farry], and Hoarty (5,485,197).

Regarding claim 11, Hendricks discloses a method for acquiring and delivering content, comprising:

receiving a content download request from a user terminal (video on demand requests, col. 13, lines 34-40; col. 13 line 66 – col. 14 line 14; and col. 19, lines 46-54);

forwarding the requested content toward the user terminal (col. 6, lines 15-43), and

logging the delivery in a server database (col. 20, lines 50-64).

Hendricks fails to disclose first receiving a search request, providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user, the content download request is one of said plurality of content found in response to said content search request, determining if the request is a local download request or a remote download request and if the request is a remote download request, determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator, and if the content is to be delivered directly, establishing a communications link from a remote content server to the user terminal, thereby by bypassing an aggregator, forwarding the content via said television channel, and validating the delivery of the content to the user terminal.

In an analogous art, Kenner teaches a method for acquiring and delivering content comprising receiving a content download request from a user terminal (col. 8, lines 14-25), determining if the request is a local download request or a remote download request (a check is first performed to see if requested content is locally available, col. 9, lines 42-54) and if the request is a remote download request, determining if the content is to be delivered directly or indirectly (the

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system can establish both direct links and indirect links, col. 12, lines 42-55), and if the content is to be delivered directly, and establishing a communications link from a remote content server to the user terminal (via the DSI, col. 9, lines 31-41), for the benefit of providing fast access to a wide selection of content distributed across many networks (col. 6, lines 42-52).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method of Hendricks to include determining if the request is a local download request or a remote download request and if the request is a remote download request, determining if the content is to be delivered directly or indirectly, and if the content is to be delivered directly, and establishing a communications link from a remote content server to the user terminal, as taught by Kenner, for the benefit of providing fast access to a wide selection of content distributed across many networks, eliminating the limitation of only making available locally stored content on demand.

Hendricks and Kenner fail to disclose first receiving a search request, providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user, the content download request is one of said plurality of content found in response to said content search request, validating the delivery of the content to the user terminal, directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal,

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thereby bypassing an aggregator, and forwarding the content via said television channel.

In an analogous art, Campanella discloses validating the delivery of content for the benefit of accurate billing for the delivery of said content (col. 17, lines 60-67).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks and Kenner to include validating the delivery of content, as taught by Campanella, for the benefit of accurate billing for the delivery of said content.

Hendricks, Kenner, and Campanella fail to disclose first receiving a search request, providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user, the content download request is one of said plurality of content found in response to said content search request, directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator, and forwarding the content via said television channel.

In an analogous art, Farry discloses a video distribution network (col. 4, lines 10-28) wherein the establishment of a direct link between a requesting subscriber and an information source is through a permanent virtual circuit through a digital cross-connect switch (col. 7, lines 15-22, col. 7, lines 56-64, and

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col. 11, lines 15-41), providing the benefit of lowered routing delays (col. 2, lines 20-21).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks, Kenner, and Campanella to establish direct links in the manner disclosed by Farry (thereby bypassing the aggregator), for the benefit of lowering the routing delay in fulfilling a subscriber's request.

Hendricks, Kenner, Campanella, and Farry fail to disclose first receiving a search request, providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user, and the content download request is one of said plurality of content found in response to said content search request, and forwarding the content via said channel.

In an analogous art, Hoarty teaches a method for delivering content wherein users send search requests upstream to locate content of interest by interacting with a search interface which returns search results (col. 19, lines 28-45) via a numeric channel selectable by a user (col. 7, lines 25-35 and col. 8, lines 40-49) over which the content is forwarded (col. 12, lines 15-28), providing the benefit of a search feature which allows users to locate content of interest without necessarily knowing the specific title or identifier of the content ahead of time.

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks, Kenner, Campanella, and Farry to include receiving a search request, providing a plurality of content associated with said content search request to a user via a numeric television channel selectable by a user, and the content download request is one of said plurality of content found in response to said content search request, and forwarding the content via said channel, as taught by Hoarty, providing the benefit of a search feature which allows users to locate content of interest without necessarily knowing the specific title or identifier of the content ahead of time.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks, Kenner, Campanella, Farry, and Hoarty as applied to claim 11 above, and further in view of Wilkins (5,446,919, of record).

Regarding claim 12, Hendricks, Kenner, Campanella, Farry, and Hoarty disclose the method of claim 11, wherein if the request is a local download request (when content is stored locally in storage device 308, see Hendricks col. 9, lines 50-67 and col. 15 line 47 – col. 16 line 3), performing the steps of:

analyzing metadata related to the requested content, determining, based on the analyzed metadata, if the requested content is in a correct format for delivery to the user terminal, and reformatting the requested content as needed into a required format for delivery to the user terminal , and routing the requested content of the correct format to a content delivery server (where content is

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formatted as needed depending on who the content is being delivered to, see Hendricks, col. 14, lines 20-38 and col. 15 line 31 – col. 16 line 3, prior to being delivered to the cable headend 207 for distribution, see fig. 1);

analyzing a user profile associated with a user of the user terminal and the content metadata and based on the analyzed user profile and the content metadata applying a digital rights management scheme to the content delivery (see Hendricks, col. 18, lines 39-58 and col. 20 line 50 – col. 21 line 9); and incorporating advertisements into the requested content (Hendricks, col. 17, lines 49-67).

Hendricks, Kenner, Campanella, Farry, and Hoarty fail to disclose the incorporating of advertisements into the requested content includes at least one advertisement targeted to a user of the user terminal.

In an analogous art, Wilkins teaches targeting advertisements to specific users (col. 8, lines 3-41 and col. 11, lines 19-38), for the benefit of improved advertising (col. 4 line 44 – col. 5 line 39).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks, Kenner, Campanella, Farry, and Hoarty to include targeting advertisements to specific users, as taught by Wilkins, for the benefit of improved, more effective, advertising.

Regarding claim 13, Hendricks, Kenner, Campanella, Farry, and Hoarty disclose the method of claim 11, wherein if the requested content is to be delivered indirectly (Kenner, col. 12, lines 42-55), performing the steps of:

acquiring the requested content via a content acquisition server located in the aggregator (local SRU through which content is routed to a user terminal, Kenner, col. 11, lines 45-51);

if the requested content should be stored at the aggregator local storage (Kenner, col. 9, lines 55-67), performing the steps of:

determining a format of the requested content, if the format of the requested content is not correct for storage, reformatting the requested content, storing the requested content (Hendricks, col. 11, lines 46-60), analyzing metadata related to the requested content, determining, based on the analyzed metadata, if the requested content is in a correct format for delivery to the user terminal, and reformatting the requested content as needed into a required format for delivery to the user terminal, routing the requested content of the correct format to a content delivery server (where content is formatted as needed depending on who the content is being delivered to, see Hendricks, col. 14, lines 20-38 and col. 15 line 31 – col. 16 line 3, prior to being delivered to the cable headend 207 for distribution, see fig. 1); and

analyzing a user profile associated with a user of the user terminal and the content metadata and based on the analyzed user profile and the content metadata applying a digital rights management scheme to the content delivery

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(see Hendricks, col. 18, lines 39-58 and col. 20 line 50 – col. 21 line 9); and incorporating advertisements into the requested content (Hendricks, col. 17, lines 49-67).

Hendricks, Kenner, Campanella, Farry, and Hoarty fail to disclose the incorporating of advertisements into the requested content includes at least one advertisement targeted to a user of the user terminal.

In an analogous art, Wilkins teaches targeting advertisements to specific users (col. 8, lines 3-41 and col. 11, lines 19-38), for the benefit of improved advertising (col. 4 line 44 – col. 5 line 39).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks, Kenner, Campanella, Farry, and Hoarty to include targeting advertisements to specific users, as taught by Wilkins, for the benefit of improved, more effective advertising.

(10) Response to Argument

Independent Claim 11

Here, appellant simply restates the arguments submitted January 20, 2009, wherein appellant argues that the combination of Hendricks, Kenner, Campanella, Farry, and Hoarty is improper on the grounds that Campanella uses a different multiplexing technique than Farry and Hoarty (Campanella using frequency division multiplexing while Farry and Hoarty utilize time division

multiplexing) and that Campanella uses different operating frequency bands than those used by Hoarty (appeal brief, pages 4-5).

As explained by the examiner in the both the Final Office Action mailed on November 17, 2008 and the Advisory Action mailed on January 28, 2009, appellant's arguments simply have no bearing on the proposed combination. Given that the primary reference, Hendricks, discloses a functioning distribution system, when a person of ordinary skill in the art would view the secondary references, there is simply no need or benefit (thus no motivation) to modifying said distribution system to alter either the multiplexing method used or the frequency bands utilized by Hendricks. The proposed combinations for which there is a need or benefit (disclosed above in the 'Grounds of Rejection') are entirely unrelated to which type of multiplexing method is used or which frequency bands are utilized.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Dominic D Saltarelli/

Primary Examiner, Art Unit 2421

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